

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

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Petition for Expedited  
Declaratory Rulings

)  
) CC Docket No. 98-5  
)

**REPLY COMMENTS OF U S WEST, INC.**

U S WEST, Inc. ("U S WEST") hereby submits Reply Comments to the  
Petition filed by LCI International Telecom Corp. ("LCI") for declaratory rulings to  
establish structural and transactional separation requirements for Bell Operating  
Companies ("BOC") seeking interLATA relief.<sup>1</sup>

I. **THE PURPORTED BENEFIT TO THE BOC'S OF IMPLEMENTING LCI'S  
PROPOSAL IS ILLUSORY; THE BOC'S MUST STILL COMPLY WITH THE  
REQUIREMENTS IN SECTION 271**

LCI says that its proposal is a "voluntary alternative" to enable the BOCs to  
comply with the requirements in Section 271 to obtain interLATA relief.<sup>2</sup> LCI  
contends that implementation of its Plan would result in a rebuttable presumption  
that a BOC meets the checklist and the public interest test under Section 271. The

<sup>1</sup> Petition of LCI International Telecom Corp. for Expedited Declaratory Rulings,  
filed Jan. 22, 1998. Comments filed herein Mar. 23, 1998. Public Notice,  
Commission Seeks Comment On LCI Petition For Declaratory Ruling Concerning  
Bell Operating Company Entry Into In-Region Long Distance Markets, DA 98-130,  
rel. Jan. 26, 1998. Order extending reply comments dates, DA 98-339, rel. Feb. 20,  
1998.

<sup>2</sup> LCI Comments at 7.

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Plan is described as creating a “safe harbor” for a BOC.<sup>3</sup>

However, LCI concedes that its Plan does not offer any advantage to a BOC who seeks interLATA relief: “[I]t is wrong for the RBOCs to expect to come out better under the element-by-element checklist approach toward Section 271 approval than under Fast Track, for compliance with Section 271 is necessary in either case.”<sup>4</sup>

U S WEST agrees with Ameritech that “this presumption does not relieve a BOC of its duty to prove that it met all the checklist requirements, nor does it prevent any party from objecting to the lack of evidence on any item, or otherwise claiming that the BOC has failed to met [sic] it.”<sup>5</sup>

MCI Telecommunications Corporation (“MCI”) attempts to cast LCI’s Plan in the most favorable light. However, even MCI is forced to admit that LCI’s Plan and its attendant rebuttable presumption cannot supplant “actual compliance with section 271 requirements”<sup>6</sup> and that Section 10 of the 1996 Act does not permit the Commission to forebear from requiring compliance with all of the requirements in Section 271. “Allowing an RBOC to use the partial structural separation in LCI’s plan as a ‘rebuttable presumption’ that it has met the requirements in section 271 would effectively circumvent the express limitation on the Commission’s

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<sup>3</sup> Id. at 4.

<sup>4</sup> Id. at 7-8.

<sup>5</sup> Ameritech at 18. BellSouth Corporation (“BellSouth”) also agrees that “the Bell company still needs to satisfy Congress’s mandatory criteria in order to receive interLATA entry under the Act.” BellSouth at 5.

<sup>6</sup> MCI at 15.

forbearance authority in Section 10.”<sup>7</sup>

Even though it supposedly offers a way for a BOC to demonstrate compliance with the requirements in Section 271, Excel Telecommunications, Inc. (“Excel”) concedes that LCI’s plan “is not . . . a replacement for the statute” and it urges the Commission to “stand firm in its interpretation of Section 271” that the Commission must require evidence that the local market has been fully and irreversibly opened to competition before a BOC will be permitted to obtain interLATA relief.<sup>8</sup>

Ameritech puts it succinctly and to the point: “[T]he Commission cannot swap structural separation for proof that an RBOC has met each and every one of the competitive checklist requirements.”<sup>9</sup>

AT&T Corp. (“AT&T”) rejects LCI’s Plan out of hand, because it cannot be used to supplant the requirements in Section 271: “[T]he Commission should not define any sort of ‘rebuttable presumption’ or factual ‘safe harbor’ for Section 271 compliance based on this framework.”<sup>10</sup>

Even if LCI thought that its Plan offered a safe harbor alternative that a BOC who implements the Plan would presumptively comply with Section 271 requirements, LCI nevertheless preserves its right to attack the rebuttable presumption and to oppose the BOCs’ Section 271 applications. Cable & Wireless, Inc. (“Cable & Wireless”) confirms that any party can attack the rebuttable

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<sup>7</sup> Id. at 15-16.

<sup>8</sup> Excel at 7.

<sup>9</sup> Ameritech at 17-18.

<sup>10</sup> AT&T at 11.

presumption and the Section 271 application if, for example, “it shows that the BOC improperly designed the NetCo or ServCo subsidiary corporate structures” or if the BOC fails “to implement any of the seven safeguards associated with the Fast Track option.”<sup>11</sup> Fibernet Telecom, Inc. (“Fibernet”) goes even further. It will not be enough for a BOC to implement LCI’s Plan. “It will be necessary to determine whether the restructuring is effective.”<sup>12</sup>

Based upon the comments by LCI, the RBOCs, and most of the interexchange carriers (“IXC”) in this docket, it is plain that no one believes that LCI’s Plan would facilitate BOC entry into the interLATA market. A BOC who chooses to implement the Plan faces a massive time consuming and costly restructuring effort. Ameritech says that such a divestiture will take at least 18 to 36 months to plan and implement, and it estimates that adoption of LCI’s Plan would delay long distance entry by at least 2 to 4 years.<sup>13</sup>

Implementation of LCI’s Plan will also generate substantial customer confusion and anger. U S WEST agrees with BellSouth who says that “customers would be forced to change carriers, choosing between ‘ServCo’ and other CLECs. Customers thus would be deprived of an option that they value greatly today: the ability to stay with the local telephone company that has served them well for

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<sup>11</sup> Cable & Wireless at 8-9.

<sup>12</sup> Fibernet at 5.

<sup>13</sup> Ameritech at 18-19.

years.”<sup>14</sup> The State Consumer Advocates also voice their concern: “[I]t is somewhat troubling under the LCI Petition that such competition could occur largely as a result of the elimination of NetCo as a potential service provider. [cite omitted.] As suggested by LCI, the transfer of new customers, and the balloting of old customers, may mean that some consumers will lose the opportunity to continue purchasing service from NetCo. This could also lead to some confusion among consumers - some of whom will continue to be served by NetCo for some period and others will be compelled to purchase service from ServCo or other CLECs.”<sup>15</sup>

Notwithstanding all of this, the BOC must still demonstrate compliance with each of the requirements in Section 271, even if the BOC had not implemented LCI's Plan, and the BOC's Section 271 application continues to be subject to attack from all fronts. “Fast Track” is a misnomer and an illusion.

## II. POSITIONING NETCO AS A CARRIER'S CARRIER AND SERVCO AS A CLEC MAY ELIMINATE OPTIONS WHICH NEW ENTRANTS ENJOY TODAY

Many commenters endorse LCI's proposal to position NetCo as a wholesale

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<sup>14</sup> BellSouth at 11. SBC Communications, Inc. (“SBC”) echoes that sentiment: “LCI's approach seems to be to argue competition, punish and handcuff the BOCs, make it impossible for ServCos to compete effectively, then ballot and allocate remaining customers via a minimally competitive process, while causing significant confusion for consumers generally.” SBC at 31. Bell Atlantic agrees: “LCI's proposal would confuse and irritate the Bell Operating Companies' current local service customers. Every one of their customers would have to select another company for their local service or be allocated to another company, even if they didn't want to. No customers currently served by a Bell Operating Company would be able to continue receiving local service from the company that now serves them. This required change of local service provider would inevitably generate confusion and dissatisfaction among consumers.” Bell Atlantic at 6-7.

<sup>15</sup> State Consumer Advocates at 4.

provider -- a carrier's carrier -- and to bar it from offering services in the retail end-user market after its base of BOC end-user customers has been reassigned to CLECs. Their endorsements are reinforced with imagined benefits they see for themselves. For example, the Competitive Telecommunications Association ("CompTel") says:

[T]he prospect that [sic] of the emergence of a "carrier's carrier," could produce significant benefits for the rapid development of broad-based competition to rural and residential markets. A wholesale-only carrier will have an incentive to provide service to all carriers, not just the BOC retail affiliate, in order to maximize revenues through the use of its network.<sup>16</sup>

Cable & Wireless also endorses the notion that NetCo would become a carrier's carrier:

[A] BOC that volunteers to create the NetCo subsidiary will have an incentive to act as a wholesale "carrier's carrier," as LCI states, and maximize its profits by provisioning network facilities and services to competing CLECs, and ServCo alike, on attractive terms and conditions, and of a superior quality. As a separate wholesale business, NetCo would be focused on providing efficient operations support services and packaging unbundled network elements in competitor-friendly formats to CLECs. Ultimately, local telephone customers would benefit from the increased local competition.<sup>17</sup>

ICG Telecom Group ("ICG") also supports positioning NetCo as a "carrier's carrier" wholesale provider. However, ICG fears that this may discourage other facilities-based providers from constructing their own facilities, because NetCo would be motivated to encourage all retail providers to use NetCo's facilities to the greatest extent possible. As a result, ICG believes that NetCo would be more

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<sup>16</sup> CompTel at 16. Excel agrees with CompTel's endorsement. Excel at 6.

<sup>17</sup> Cable & Wireless at 6.

responsive and reasonable to resellers and less responsive and reasonable to carriers who interconnect their own facilities or who purchase only unbundled network elements.<sup>18</sup>

The Telecommunications Resellers Association ("TRA"), on behalf of its 650 small to mid-sized resale carriers, also believes that "[v]iable resale of local service requires the introduction into each local market of one or more facilities-based providers, at least one of which acts as a 'carriers' carrier' or as a 'hybrid' service provider committed to the wholesale market."<sup>19</sup> TRA also says: "TRA's resale carrier members do not fear additional competition from the BOCs. Their only fear is that they will be denied the opportunity to compete on equal terms because barriers to entry into the local market have not been effectively dismantled."<sup>20</sup>

MCI criticizes positioning NetCo as a carrier's carrier: "NetCo . . . would have no incentive to improve its monopoly facilities, since . . . there would be no facilities-based local competition . . . in the foreseeable future. Other CLECs -- and, during the transition, mass market local customers -- would be stuck with the increasingly limited offerings available from NetCo which could degrade its facilities . . . ." <sup>21</sup>

In their rush to endorse LCI's proposal, TRA and other commenters overlook a major defect. The businesses of TRA's 650 small to mid-sized resale carriers

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<sup>18</sup> ICG at 5.

<sup>19</sup> TRA at 16, and see id. at 7.

<sup>20</sup> Id. at 6.

<sup>21</sup> MCI at 12.

depend upon the resale duty imposed upon ILECs in Section 251(c)(4) of the 1996 Act to offer telecommunications services provided at retail to end-user customers to resellers at a wholesale rate. However, as U S WEST said in its Comments, LCI's proposal would effectively eliminate resale as one of the three paths by which new entrants could enter or remain in the local market for the following reasons.<sup>22</sup>

Under LCI's proposal, NetCo would be regarded as an ILEC who would be subject to the resale duty in Section 251(c)(4); however, because it would be a carrier's carrier and could offer no end-user customer retail services, NetCo would offer no retail telecommunications services which are subject to the resale duty in Section 251(c)(4) and, consequently, resellers would be unable to purchase any telecommunications services from NetCo at wholesale rates. On the other hand, under LCI's proposal, ServCo would provide retail telecommunications services to end users as a CLEC, but not as an ILEC, and it would not be subject to the resale duty in Section 251(c)(4). It is unclear why TRA would support a plan which would undermine its members' resale business.

Other commenters see another impact upon the ability of new entrants to introduce and use the newest telecommunications technologies, services, and features: "ServCo . . . could provide state-of-the-art features not offered to others."<sup>23</sup> However, under LCI's proposal ServCo would not be subject to the obligation in Section 251(c)(4) to offer any of these state-of-the-art services to resellers at a wholesale discount. "[U]nder LCI's plan, the retail services offered by the BOCs'

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<sup>22</sup> U S WEST Comments at 15-19.



NetCo (and thereby available for resale) are frozen and, therefore, new products and features would not be available to resellers."<sup>24</sup>

Implementation of LCI's proposal would effectively eliminate resale as one of the three paths by which new entrants could enter or remain in the local market.

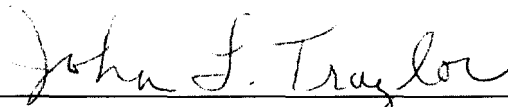
### III. CONCLUSION

LCI's proposal offers nothing to BOCs who seek interLATA relief. Notwithstanding the Plan, BOCs must still demonstrate compliance with each checklist item and with the public interest test. However, even more disturbing is the fact that LCI's Plan is fundamentally anticompetitive, because it will harm some classes of new entrants such as resellers or even force them out of the market altogether. LCI's proposal is ill-advised: It is bad regulatory policy and it is bad competition policy.

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<sup>23</sup> MCI at 12.

<sup>24</sup> Ameritech at 14.

## CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 22<sup>nd</sup> day of April, 1998, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.** to be served, via first class United States Mail, postage prepaid, upon the persons listed on the attached service list.

  
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